



April 6, 2001

ENGROSSED SENATE BILL No. 427

DIGEST OF SB 427 (Updated April 4, 2001 3:27 PM - DI 103)

Citations Affected: IC 12-7; IC 12-15; IC 16-42; IC 25-26; noncode.

Synopsis: Generic drugs under CHIP. Requires a pharmacist who fills a prescription that is covered under the children's health insurance program (CHIP) to fill the prescription with a generically equivalent drug product and inform the customer of the substitution if the substitution results in a lower price, unless the prescribing practitioner indicates that the prescription must be filled with a brand name drug. Defines "television station" as a broadcasting station: (1) that is licensed by the Federal Communications Commission as a commercial television station; and (2) whose transmission is received in Indiana. Requires a legend drug manufacturer to provide to the office of Medicaid policy and planning (OMPP) four times each year a list of legend drugs advertised on a television station during the previous quarter. Requires a legend drug manufacturer to provide each pharmacy that participates in the Medicaid program with copies of a verbatim written transcript of each advertisement. Requires OMPP to require prior authorization for a legend drug advertised on a television station during the previous quarter. Provides that if a manufacturer fails to comply with advertising and reporting requirements for a legend drug, a prescription for the legend drug may not be filled under the Medicaid program. Requires a pharmacist, when dispensing a legend drug that requires prior authorization due to being advertised on a television station, to provide the patient with a copy of the verbatim written transcript of any advertisement regarding that drug.

Effective: July 1, 2001.

Meeks R, Young R, Breaux, Antich

(HOUSE SPONSORS — BAUER, ESPICH)

January 18, 2001, read first time and referred to Committee on Health and Provider Services.

February 8, 2001, reported favorably — Do Pass.

February 12, 2001, read second time, ordered engrossed.

February 13, 2001, engrossed.

February 15, 2001, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 26, 2001, read first time and referred to Committee on Ways and Means.

April 5, 2001, amended, reported — Do Pass.

ES 427—LS 8073/DI 97+



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April 6, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED SENATE BILL No. 427

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-7-2-122.7 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2001]: **Sec. 122.7. "Legend drug", as used in**
4 **IC 12-15-31-6, has the meaning set forth in IC 16-18-2-199.**

5 SECTION 2. IC 12-7-2-127.3 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2001]: **Sec. 127.3. "Manufacturer", as used**
8 **in IC 12-15-31-6, has the meaning set forth in IC 25-26-14-8.**

9 SECTION 3. IC 12-7-2-190.3 IS ADDED TO THE INDIANA
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2001]: **Sec. 190.3. "Television station", as**
12 **used in IC 12-15-31-6, has the meaning set forth in**
13 **IC 12-15-31-6(c).**

14 SECTION 4. IC 12-15-31-6 IS ADDED TO THE INDIANA CODE
15 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2001]: **Sec. 6. (a) As used in this section, "legend drug" has the**
17 **meaning set forth in IC 16-18-2-199.**

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(b) As used in this section, "manufacturer" has the meaning set forth in IC 25-26-14-8.

(c) As used in this section, "television station" means a broadcasting station:

(1) that is licensed by the Federal Communications Commission as a commercial television station; and

(2) whose transmission is received in Indiana.

The term includes a broadcasting station whose transmission is received through the use of cable, digital, satellite, or similar television equipment.

(d) Not later than January 1, April 1, July 1, and October 1 of each year, a manufacturer shall submit to the office a list of each legend drug:

(1) manufactured, prepared, propagated, compounded, processed, packaged, repackaged, or labeled by the manufacturer; and

(2) advertised on a television station at any time during the previous three (3) months.

(e) A manufacturer shall provide each pharmacy that participates in the Medicaid program with copies of a verbatim written transcript of each advertisement of a legend drug broadcast on a television station during the previous three (3) months. The number of copies provided under this subsection must be sufficient for the pharmacy to comply with IC 25-26-13-32.

(f) The office shall require prior authorization for a legend drug that is reported in a list filed under subsection (d).

(g) The office shall remove a legend drug from prior authorization if:

(1) the drug was not advertised on a television station during the most recently completed quarter; and

(2) prior authorization is not otherwise required by law.

(h) A prescription may not be filled under the Medicaid program for a legend drug for which the manufacturer has failed to comply with the requirements of this section.

(i) The office may adopt rules to implement this section.

SECTION 5. IC 16-42-22-8, AS AMENDED BY P.L.239-1999, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. (a) For substitution to occur for a prescription other than a prescription filled under the Medicaid program (42 U.S.C. 1396 et seq.), **the children's health insurance program established under IC 12-17.6-2**, or the Medicare program (42 U.S.C. 1395 et seq.):

(1) the practitioner must sign on the line under which the words



"May substitute" appear; and

(2) the pharmacist must inform the customer of the substitution.

(b) This section does not authorize any substitution other than substitution of a generically equivalent drug product.

SECTION 6. IC 16-42-22-10, AS AMENDED BY P.L.239-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) If a prescription is filled under the Medicaid program (42 U.S.C. 1396 et seq.), **the children's health insurance program established under IC 12-17.6-2**, or the Medicare program (42 U.S.C. 1395 et seq.), the pharmacist shall substitute a generically equivalent drug product and inform the customer of the substitution if the substitution would result in a lower price unless:

(1) the words "Brand Medically Necessary" are written in the practitioner's own writing on the form; or

(2) the practitioner has indicated that the pharmacist may not substitute a generically equivalent drug product by orally stating that a substitution is not permitted.

(b) If a practitioner orally states that a generically equivalent drug product may not be substituted, the practitioner must subsequently forward to the pharmacist a written prescription with the "Brand Medically Necessary" instruction appropriately indicated in the physician's own handwriting.

(c) This section does not authorize any substitution other than substitution of a generically equivalent drug product.

SECTION 7. IC 25-26-13-32 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 32. When dispensing a drug for which prior authorization is required under IC 12-15-31-6(f), a pharmacist shall provide the patient with a copy of each verbatim written transcript concerning the drug provided by the drug's manufacturer under IC 12-15-31-6(e).**

SECTION 8. [EFFECTIVE JULY 1, 2001] (a) As used in this SECTION, "manufacturer" has the meaning set forth in IC 25-26-14-8.

(b) Notwithstanding IC 12-15-31-6(d) and IC 12-15-31-6(e), both as added by this act, a manufacturer is not required to file the information required under IC 12-15-31-6(d) or provide the information required under IC 12-15-31-6(e), both as added by this act, until October 1, 2001.

(c) This SECTION expires October 31, 2001.

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SENATE MOTION

Mr. President: I move that Senator Young R be added as coauthor of Senate Bill 427.

MEEKS R

SENATE MOTION

Mr. President: I move that Senator Breaux be added as coauthor of Senate Bill 427.

MEEKS R

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COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 427, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 427 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 9, Nays 0.

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ES 427—LS 8073/DI 97+



SENATE MOTION

Mr. President: I move that Senator Antich be added as coauthor of Engrossed Senate Bill 427.

MEEKS R

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 427, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 12-7-2-122.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 122.7. "Legend drug", as used in IC 12-15-31-6, has the meaning set forth in IC 16-18-2-199.**

SECTION 2. IC 12-7-2-127.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 127.3. "Manufacturer", as used in IC 12-15-31-6, has the meaning set forth in IC 25-26-14-8.**

SECTION 3. IC 12-7-2-190.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 190.3. "Television station", as used in IC 12-15-31-6, has the meaning set forth in IC 12-15-31-6(c).**

SECTION 4. IC 12-15-31-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 6. (a) As used in this section, "legend drug" has the meaning set forth in IC 16-18-2-199.**

(b) As used in this section, "manufacturer" has the meaning set forth in IC 25-26-14-8.

(c) As used in this section, "television station" means a broadcasting station:

- (1) that is licensed by the Federal Communications Commission as a commercial television station; and**
- (2) whose transmission is received in Indiana.**

The term includes a broadcasting station whose transmission is received through the use of cable, digital, satellite, or similar television equipment.

(d) Not later than January 1, April 1, July 1, and October 1 of each year, a manufacturer shall submit to the office a list of each legend drug:

- (1) manufactured, prepared, propagated, compounded, processed, packaged, repackaged, or labeled by the manufacturer; and**
- (2) advertised on a television station at any time during the previous three (3) months.**

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(e) A manufacturer shall provide each pharmacy that participates in the Medicaid program with copies of a verbatim written transcript of each advertisement of a legend drug broadcast on a television station during the previous three (3) months. The number of copies provided under this subsection must be sufficient for the pharmacy to comply with IC 25-26-13-32.

(f) The office shall require prior authorization for a legend drug that is reported in a list filed under subsection (d).

(g) The office shall remove a legend drug from prior authorization if:

(1) the drug was not advertised on a television station during the most recently completed quarter; and

(2) prior authorization is not otherwise required by law.

(h) A prescription may not be filled under the Medicaid program for a legend drug for which the manufacturer has failed to comply with the requirements of this section.

(i) The office may adopt rules to implement this section."

Page 2, after line 14, begin a new paragraph and insert:

"SECTION 7. IC 25-26-13-32 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 32. When dispensing a drug for which prior authorization is required under IC 12-15-31-6(f), a pharmacist shall provide the patient with a copy of each verbatim written transcript concerning the drug provided by the drug's manufacturer under IC 12-15-31-6(e).**

SECTION 8. [EFFECTIVE JULY 1, 2001] (a) As used in this SECTION, "manufacturer" has the meaning set forth in IC 25-26-14-8.

(b) Notwithstanding IC 12-15-31-6(d) and IC 12-15-31-6(e), both as added by this act, a manufacturer is not required to file the information required under IC 12-15-31-6(d) or provide the information required under IC 12-15-31-6(e), both as added by this act, until October 1, 2001.

(c) This SECTION expires October 31, 2001."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 427 as printed February 9, 2001.)

BAUER, Chair

Committee Vote: yeas 17, nays 7.

ES 427—LS 8073/DI 97+



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